

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LESLIE WINCHESTER,

Plaintiff,

v.

YAKIMA COUNTY SUPERIOR COURT,
COMMISSIONER HARTHCOCK, JUDGE
JAMES LUFT, JUDGE REUKAUF,

Defendants.

NO. CV-10-3057-EFS

ORDER DISMISSING COMPLAINT

On August 17, 2010, Plaintiff Leslie Winchester filed a Complaint (ECF No. [2](#)), which alleged that Yakima County Superior Court and the above-named judges and commissioner failed to accommodate her disability when they refused to appoint an attorney to assist her with modifying a parenting plan. Ms. Winchester believes that due to her claimed impairment, she can only prevail with the help of an attorney, whom she cannot afford to hire herself. Ms. Winchester's Complaint also alludes to a federal cause of action: "I also want this in federal court because I want any court that I may have to go to in the future to realize that they have to give adequate representation to someone who is mentally disabled." (Ct. Rec. [5](#), at 3.)

1 On October 15, 2010, and after reviewing the Complaint for legal
2 sufficiency pursuant to 28 U.S.C. § 1915(e)(2), the Court dismissed her
3 Complaint. (ECF No. 6.) Yet, because it was not absolutely clear that
4 she did not state a claim under the Americans with Disabilities Act of
5 1990 (ADA), 42 U.S.C. §§ 12101 *et seq.*, or the U.S. Constitution for
6 denial of reasonable access to the court system, the Court allowed Ms.
7 Winchester leave to amend. The Court cautioned Ms. Winchester that her
8 amended complaint cannot seek review of the state court's application of
9 Washington State General Rule (GR) 33, which defines the procedure state
10 courts must follow to ensure access to justice for all persons. It also
11 advised Ms. Winchester that Commissioner Harthcock, Judge Luft, and Judge
12 Reukauf are entitled to absolute immunity for discretionary decisions
13 made within their official duties as judicial officers, and are not
14 proper defendants. Finally, the Court advised Ms. Winchester that it
15 could not consider whether to appoint her an attorney until she states
16 a claim upon which relief may be granted, see 28 U.S.C. § 1915(e)(2), and
17 referred her to several legal services organizations.

18 On November 12, 2010, Ms. Winchester filed a document styled as a
19 First Amended Complaint (ECF No. 7). That document did not, nor did it
20 attempt to, cure the pleading defects the Court identified in its
21 previous order. Rather, Ms. Winchester simply renewed her request for
22 Court-appointed counsel to assist her with her civil matter in this
23 Court.

24 It now being absolutely clear that amendment would be futile, the
25 Court dismisses Ms. Winchester's Complaint with prejudice. See *Noll v.*
26 *Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987). Ms. Winchester has failed

1 to demonstrate how this Court has jurisdiction to review the state
2 court's application of GR 33 and their decisions regarding appointment
3 of counsel.¹ As a Plaintiff proceeding *in forma pauperis*, Ms. Winchester
4 is not entitled to Court-appointed counsel until she states a federal
5 claim upon which relief may be granted. See 28 U.S.C. § 1915(e)(2). And
6 the decision of whether to provide counsel for a claimant in a suit under
7 the ADA lies solely with the discretion of the Court. See *Donohoe v.*
8 *Food Lion Stores, Inc.*, 253 F. Supp. 2d 1319 (N.D. Ga. 2003). The
9 factors considered include a claimant's ability to afford counsel, a
10 claimant's diligence in searching for counsel, the merits of the case,
11 and the claimant's capacity to prepare and present the case without aid
12 of counsel. *Id.* Although Ms. Winchester cannot afford, has sought, and
13 claims she cannot prepare and present her civil case without counsel, her
14 Complaint lacks merit. As such, the Court declines to exercise its
15 discretion to appoint counsel.²

16 Accordingly, **IT IS HEREBY ORDERED:**

17 1) Plaintiff's Complaint (Ct. Recs. 2 & 5) is **DISMISSED WITH**
18 **PREJUDICE.**

19 2) Plaintiff's Motion to Request an Attorney (Ct. Rec. 3) is **DENIED.**

20 3) The Clerk of the Court is **DIRECTED** to enter judgment in
21 Defendant's favor.

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23 ¹ If Ms. Winchester seeks such review, she should file an appeal in
24 the state system.

25 ² If Ms. Winchester seeks immediate attorney assistance with her
26 state court child custody matter, she should seek relief in Yakima County
Superior Court or in whichever court that matter is pending.

1 4) This case is **CLOSED**.

2 **IT IS SO ORDERED.** The District Court Executive is directed to enter
3 this Order and provide a copy to Plaintiff.

4 **DATED** this 14th day of January 2011.

5
6 s/Edward F. Shea
EDWARD F. SHEA
7 United States District Judge

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